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HOUSE BILL 36

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROHIBITING THE MANUFACTURE,  
DISTRIBUTION AND SALE OF FLAVORED MALT ENERGY BEVERAGES  
CONTAINING STIMULANTS; AMENDING AND ENACTING SECTIONS OF THE  
LIQUOR CONTROL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Liquor Control Act is  
enacted to read:

"[NEW MATERIAL] IMPORT, MANUFACTURE, DISTRIBUTION OR SALE  
OF FLAVORED MALT ENERGY BEVERAGES CONTAINING STIMULANTS  
PROHIBITED.--

A. A flavored malt energy beverage shall not be  
imported, manufactured, distributed, sold or offered for sale  
anywhere in the state.

B. As used in this section, "flavored malt energy

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1 beverage" means a flavored malt beverage containing at least  
2 one-half percent alcohol by volume and containing caffeine,  
3 carnitine, eleutherococcus senticosus, guarana, Ilex  
4 paraguariensis, Panax ginseng, Panax quinquefolius or taurine  
5 and:

6 (1) that is produced by a brewer as defined in  
7 26 U.S.C. Section 5092; or

8 (2) for which the producer is required to file  
9 a formula for approval with the United States alcohol and  
10 tobacco trade and tax bureau pursuant to 27 C.F.R. Section  
11 25.55."

12 Section 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
13 Chapter 39, Section 3, as amended) is amended to read:

14 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
15 Act:

16 A. "alcoholic beverages" means distilled or  
17 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
18 and aromatic bitters bearing the federal internal revenue strip  
19 stamps or any similar alcoholic beverage, including blended or  
20 fermented beverages, dilutions or mixtures of one or more of  
21 the foregoing containing more than one-half percent alcohol,  
22 but excluding medicinal bitters;

23 B. "beer" means an alcoholic beverage obtained by  
24 the fermentation of any infusion or decoction of barley, malt  
25 and hops or other cereals in water, and includes porter, beer,

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1 ale and stout;

2 C. "brewer" means a person who owns or operates a  
3 business for the manufacture of beer;

4 D. "club" means:

5 (1) any nonprofit group, including an  
6 auxiliary or subsidiary group, organized and operated under the  
7 laws of this state, with a membership of not less than fifty  
8 members who pay membership dues at the rate of not less than  
9 five dollars (\$5.00) per year and who, under the constitution  
10 and bylaws of the club, have all voting rights and full  
11 membership privileges, and which group is the owner, lessee or  
12 occupant of premises used exclusively for club purposes and  
13 which group the director finds:

14 (a) is operated solely for recreation,  
15 social, patriotic, political, benevolent or athletic purposes;  
16 and

17 (b) has been granted an exemption by the  
18 United States from the payment of the federal income tax as a  
19 club under the provisions of Section 501(a) of the Internal  
20 Revenue Code of 1986, as amended, or, if the applicant has not  
21 operated as a club for a sufficient time to be eligible for the  
22 income tax exemption, it must execute and file with the  
23 director a sworn letter of intent declaring that it will, in  
24 good faith, apply for ~~[such]~~ an income tax exemption as soon as  
25 it is eligible; or

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1 (2) an airline passenger membership club  
2 operated by an air common carrier that maintains or operates a  
3 clubroom at an international airport terminal. For the  
4 purposes of this paragraph, "air common carrier" means a person  
5 engaged in regularly scheduled air transportation between fixed  
6 termini under a certificate of public convenience and necessity  
7 issued by the civil aeronautics board;

8 E. "commission" means the secretary of public  
9 safety when the term is used in reference to the enforcement  
10 and investigatory provisions of the Liquor Control Act and  
11 means the superintendent of regulation and licensing when the  
12 term is used in reference to the licensing provisions of the  
13 Liquor Control Act;

14 F. "department" means the special investigations  
15 division of the department of public safety when the term is  
16 used in reference to the enforcement and investigatory  
17 provisions of the Liquor Control Act and means the director of  
18 the alcohol and gaming division of the regulation and licensing  
19 department when the term is used in reference to the licensing  
20 provisions of the Liquor Control Act;

21 G. "director" means the director of the special  
22 investigations division of the department of public safety  
23 when the term is used in reference to the enforcement and  
24 investigatory provisions of the Liquor Control Act and means  
25 the director of the alcohol and gaming division of the

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1 regulation and licensing department when the term is used in  
2 reference to the licensing provisions of the Liquor Control  
3 Act;

4 H. "dispenser" means a person licensed under the  
5 provisions of the Liquor Control Act selling, offering for sale  
6 or having in [~~his~~] the person's possession with the intent to  
7 sell alcoholic beverages both by the drink for consumption on  
8 the licensed premises and in unbroken packages for consumption  
9 and not for resale off the licensed premises;

10 I. "distiller" means a person engaged in  
11 manufacturing spirituous liquors;

12 J. "flavored malt beverage" means an alcoholic  
13 beverage that is fermented in a manner similar to beer, from  
14 which some or all of the fermented alcohol has been removed and  
15 replaced with distilled ethyl alcohol, and:

16 (1) that contains at least one-half of one  
17 percent alcohol by volume;

18 (2) that is treated by processing, filtration  
19 or another method of manufacture that is not generally  
20 recognized as a traditional process in the production of beer  
21 as described in 27 C.F.R. Section 25.55;

22 (3) to which is added flavor or other  
23 ingredients containing alcohol, except for a hop extract;

24 (4) for which the producer is required to file  
25 a formula for approval with the United States alcohol and

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1 tobacco tax and trade bureau pursuant to 27 C.F.R. Section  
2 25.55; and

3 (5) that is not exempt pursuant to Subdivision  
4 (f) of 27 C.F.R. Section 25.55;

5 [~~J-~~] K. "golf course" means a tract of land and  
6 facilities used for playing golf and other recreational  
7 activities that includes tees, fairways, greens, hazards,  
8 putting greens, driving ranges, recreational facilities,  
9 patios, pro shops, cart paths and public and private roads that  
10 are located within the tract of land;

11 [~~K-~~] L. "governing body" means the board of county  
12 commissioners of a county or the city council or city  
13 commissioners of a municipality;

14 [~~L-~~] M. "hotel" means an establishment or complex  
15 having a resident of New Mexico as a proprietor or manager and  
16 where, in consideration of payment, meals and lodging are  
17 regularly furnished to the general public. The establishment  
18 or complex must maintain for the use of its guests a minimum of  
19 twenty-five sleeping rooms;

20 [~~M-~~] N. "licensed premises" means the contiguous  
21 areas or areas connected by indoor passageways of a structure  
22 and the outside dining, recreation and lounge areas of the  
23 structure that are under the direct control of the licensee and  
24 from which the licensee is authorized to sell, serve or allow  
25 the consumption of alcoholic beverages under the provisions of

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1 its license; provided that in the case of a restaurant,  
2 including a restaurant that has operated continuously in two  
3 separate structures since July 1, 1987 and that is located in a  
4 local option district that has voted to disapprove the transfer  
5 of liquor licenses into that local option district, hotel, golf  
6 course or racetrack, "licensed premises" includes all public  
7 and private rooms, facilities and areas in which alcoholic  
8 beverages are sold or served in the customary operating  
9 procedures of the restaurant, hotel, golf course or racetrack;

10 ~~[N.]~~ O. "local option district" means a county that  
11 has voted to approve the sale, serving or public consumption of  
12 alcoholic beverages, or ~~[any]~~ an incorporated municipality that  
13 falls within a county that has voted to approve the sale,  
14 serving or public consumption of alcoholic beverages, or ~~[any]~~  
15 an incorporated municipality of over five thousand population  
16 that has independently voted to approve the sale, serving or  
17 public consumption of alcoholic beverages under the terms of  
18 the Liquor Control Act or any former act;

19 ~~[O.]~~ P. "manufacturer" means a distiller,  
20 rectifier, brewer or winer;

21 ~~[P.]~~ Q. "minor" means a person under twenty-one  
22 years of age;

23 ~~[Q.]~~ R. "package" means an immediate container of  
24 alcoholic beverages that is filled or packed by a manufacturer  
25 or wine bottler for sale by the manufacturer or wine bottler to

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[bracketed material] = delete

1 wholesalers;

2           [~~R~~] S. "person" means an individual, corporation,  
3 firm, partnership, copartnership, association or other legal  
4 entity;

5           [~~S~~] T. "rectifier" means a person who blends,  
6 mixes or distills alcohol with other liquids or substances for  
7 the purpose of making an alcoholic beverage for the purpose of  
8 sale other than to the consumer by the drink, and includes all  
9 bottlers of spirituous liquors;

10           [~~F~~] U. "restaurant" means an establishment having  
11 a New Mexico resident as a proprietor or manager that is held  
12 out to the public as a place where meals are prepared and  
13 served primarily for on-premises consumption to the general  
14 public in consideration of payment and that has a dining room,  
15 a kitchen and the employees necessary for preparing, cooking  
16 and serving meals; provided that "restaurant" does not include  
17 establishments as defined in rules promulgated by the director  
18 serving only hamburgers, sandwiches, salads and other fast  
19 foods;

20           [~~U~~] V. "retailer" means a person licensed under  
21 the provisions of the Liquor Control Act selling, offering for  
22 sale or having in [~~his~~] the person's possession with the intent  
23 to sell alcoholic beverages in unbroken packages for  
24 consumption and not for resale off the licensed premises;

25           [~~V~~] W. "spirituous liquors" means alcoholic

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1 beverages as defined in Subsection A of this section except  
2 fermented beverages such as wine, beer and ale;

3 ~~[W.]~~ X. "wholesaler" means a person whose place of  
4 business is located in New Mexico and who sells, offers for  
5 sale or possesses for the purpose of sale any alcoholic  
6 beverages for resale by the purchaser;

7 ~~[X.]~~ Y. "wine" includes the words "fruit juices"  
8 and means alcoholic beverages obtained by the fermentation of  
9 the natural sugar contained in fruit or other agricultural  
10 products, with or without the addition of sugar or other  
11 products, that do not contain less than one-half percent nor  
12 more than twenty-one percent alcohol by volume;

13 ~~[Y.]~~ Z. "wine bottler" means a New Mexico  
14 wholesaler who is licensed to sell wine at wholesale for resale  
15 only and who buys wine in bulk and bottles it for wholesale  
16 resale;

17 ~~[Z.]~~ AA. "winegrower" means a person who owns or  
18 operates a business for the manufacture of wine; and

19 ~~[AA.]~~ BB. "winer" means a winegrower."